

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0701, Appeal of Ronald Barrett, the court on January 26, 2007, issued the following order:

The employee, Ronald Barrett, appeals an order of the New Hampshire Compensation Appeals Board (board) denying payment of his medical bills. He argues that the board erred in: (1) relying solely upon an IME report that misstated applicable law; (2) finding that the identical course of treatment for the same injury was no longer compensable; (3) ruling against the weight of the evidence; (4) giving insufficient weight to the treating physician's opinion; (5) misapplying Appeal of Staniels, 142 N.H. 794 (1998); and (6) considering the absence of medical bills as a reason for denial of the claim. We reverse and remand.

We will not reverse the board's decision unless the party appealing demonstrates either that the board erred as a matter of law, or that the board's decision, by a clear preponderance of the evidence, is unjust or unreasonable. See RSA 541:13 (1997); Appeal of Hypertherm, 152 N.H. 21, 23 (2005).

The claim before the board was brought pursuant to RSA 281-A:23. The initial burden was on the employee to establish that the treatment was reasonable and that the nature of the injury required that it continue. Appeal of Lalime, 141 N.H. 534, 537 (1996). The burden of production then shifted to the employer to rebut the claim. *Id.* A determination of reasonableness is not outcome dependent; rather, the proper analysis is whether the employee presented objective evidence showing that it was reasonable to seek further treatment. *Id.* Findings that an employee has reached a medical endpoint or that treatment is palliative rather than curative are inconclusive on the question of reasonableness. Appeal of Levesque, 136 N.H. 211, 214 (1992).

In this case, the board found that "there had been no change in the employee's condition, which required chiropractic treatment" since the board's last decision. The board also found that the employee received a two- to four-day benefit from the chiropractic treatment. The board did not articulate specific reasons in its order for finding that continuing the treatment was unreasonable; rather it cited the report of the independent medical examiner (IME). The IME report stated that there was no evidence to support the ongoing delivery of passive modalities and manipulative therapy and further that there was no evidence that the care the employee received provided any lasting therapeutic benefit or that his condition worsened in the absence of care. The report concluded that "[o]n that basis, an end result has been

achieved.” The board also cited the absence of medical bills that could be reviewed for reasonableness.

The board’s reliance upon the IME report is undermined by the board’s factual finding that the employee received up to four days’ relief from the chiropractic treatment, which is contrary to the IME’s statement that there was no evidence to support the ongoing delivery of such services. While the IME report might support a finding that the treatment is not curative, that finding is insufficient to support the board’s decision. See Levesque, 136 N.H. at 214.

We note that there is no allegation that the amount charged for the chiropractic treatment was unreasonable. Therefore, the absence of medical bills cited in the board’s decision had little relevance to the issue before the board; that is, whether ongoing chiropractic treatment was reasonable in this case.

Based upon the record before us, including the board’s findings of fact, we conclude that the claimant satisfied his burden and established that the chiropractic treatment was compensable. Accordingly, we reverse the decision of the board and remand for further action consistent with this order.

Reversed and remanded.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**